IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO.6244 OF 2004

Shri Vishnu Appa Bailbhinge & Ors. ...Petitioners
Vs.
The State of Maharashtra & Ors. ...Respondents

Shri M. A. Patil for the Petitioners.
Shri M. H. Solkar, A.G.P. for the Respondent No.1.

CORAM : A.S.OKA, J.
DATE : JANUARY 27, 2006.

P.C.:

1. Heard Shri Patil appearing for the Petitioners. The Petitioners are the original plaintiffs. The Petitioners made an Application at Exhibit 5 for temporary injunction before the Trial Court. The Application was rejected by the Trial Court by order dated 18th January, 2001. An Appeal preferred by the Petitioners for challenging the order of the Trial Court has been dismissed by the Appellate Court by the Judgment and Order dated 13th February, 2003. This Petition takes exception to both the aforesaid orders.

2. Perusal of the order-sheet of this Petition shows that there is no ad-interim order granted in favour of the Petitioners. Thus, there is no ad-interim injunction operating in favour of the Petitioners for the last about three years. The order granting temporary injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure, 1908 is always

discretionary. Considering the fact that for such a long time there is no ad-interim order operating in favour of the Petitioners, no interference can be made.

3. Shri. Patil appearing for the Petitioners made a grievance regarding the findings recorded by the learned Civil Judge on question of maintainability of the suit and the jurisdiction of the Civil Court to entertain the suit filed by the Petitioners and submitted that the said observations are contrary to well settled law.

4. It is obvious that the said observations are made for limited purposes of considering the prayer for grant of interim injunction made by the Petitioners. The said observations are only tentative observations and while deciding the main suit finally the learned Trial Judge will not be bound by said observations and he will decide the said suit on its own merits without being influenced by the observations made in impugned order. Subject to what is stated above the Petition is rejected.

JUDGE